

KAZEROUNI LAW GROUP, APC
245 FISCHER AVENUE, UNIT D1
COSTA MESA, CA 92626

KAZEROUNI LAW GROUP, APC

Abbas Kazerounian, Esq. (SBN: 249203)

ak@kazlg.com

Matthew M. Loker, Esq. (SBN: 279939)

ml@kazlg.com

245 Fischer Avenue, Unit D1

Costa Mesa, CA 92626

Telephone: (800) 400-6808

Facsimile: (800) 520-5523

HYDE & SWIGART

Joshua B. Swigart, Esq. (SBN: 225557)

josh@westcoastlitigation.com

Alexander H. Lim, Esq. (SBN: 297525)

alex@westcoastlitigation.com

2221 Camino Del Rio South, Suite 101

San Diego, CA 92108

Telephone: (619) 233-7770

Facsimile: (619) 297-1022

Attorneys for Plaintiff,

Frank Walworth

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

FRANK WALWORTH,

Plaintiff,

v.

**GLOBAL EXCHANGE
VACATION CLUB,**

Defendant.

Case No.:

**COMPLAINT FOR DAMAGES
FOR VIOLATION OF THE
TELEPHONE CONSUMER
PROTECTION ACT, 47 U.S.C. §
227, ET SEQ.**

JURY TRIAL DEMANDED

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INTRODUCTION

1. FRANK WALWORTH (“Plaintiffs”) brings this Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of Defendant GLOBAL EXCHANGE VACATION CLUB (“Defendant”) in negligently contacting Plaintiff on Plaintiff’s landline; and, cellular telephones, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227(b)(1)(B) (“TCPA”), thereby invading Plaintiff’s privacy. Plaintiff alleges as follows upon personal knowledge as to themselves and their own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by their attorneys.
 2. The TCPA was designed to prevent calls and messages like the ones described within this complaint, and to protect the privacy of citizens like Plaintiff. “Voluminous consumer complaints about abuses of telephone technology – for example, computerized calls dispatched to private homes – prompted Congress to pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).
 3. In enacting the TCPA, Congress intended to give consumers a choice as to how creditors and telemarketers may call them, and made specific findings that “[t]echnologies that might allow consumers to avoid receiving such calls are not universally available, are costly, are unlikely to be enforced, or place an inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. Toward this end, Congress found that
 [b]anning such automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call or when such calls are necessary in an emergency situation affecting the health and safety of the consumer, is the only effective means of protecting telephone consumers from this nuisance and privacy invasion.
- Id.* at § 12; see also *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL

1 3292838, at* 4 (N.D.Ill. Aug. 10, 2012) (citing Congressional findings on TCPA's
2 purpose).

3 4. Congress also specifically found that "the evidence presented to the Congress
4 indicates that automated or prerecorded calls are a nuisance and an invasion of
5 privacy, regardless of the type of call..." *Id.* at §§ 12-13. See also, *Mims*, 132
6 S. Ct. at 744

7 5. Plaintiff makes these allegations on information and belief, with the exception
8 of those allegations that pertain to a Plaintiff, or to a Plaintiff's counsel, which
9 Plaintiff alleges on personal knowledge.

10 6. While many violations are described below with specificity, this Complaint
11 alleges violations of the statutes cited in their entirety.

12 7. Unless otherwise stated, Plaintiff alleges that any violations by Defendant
13 were knowing and intentional, and that Defendant did not maintain procedures
14 reasonably adapted to avoid any such violation.

15 8. Unless otherwise indicated, the use of any Defendant's name in this
16 Complaint includes all agents, employees, officers, members, directors, heirs,
17 successors, assigns, principals, trustees, sureties, subrogees, representatives,
18 and insurers of that Defendant named.

19 JURISDICTION AND VENUE

20 9. This Court has federal question jurisdiction because this case arises out of
21 violation of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs., LLC*,
22 132 S. Ct. 740 (2012).

23 10. This action arises out of Defendant's violations of the Telephone Consumer
24 Protection Act ("TCPA"), 47 U.S.C. § 227, et seq.

25 11. Because Defendant conducts business within the State of California, personal
26 jurisdiction is established.

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12. Venue is proper in the United States District Court, Central District of California pursuant to 28 U.S.C. § 1391 for the following reasons: (i) Plaintiff resides in the County of Orange, State of California, which is within this judicial district; (ii) the conduct complained of herein occurred within this judicial district; and, (iii) Defendant also resides in the County of Orange, State of California, which is within this judicial district.

PARTIES

13. Plaintiff is a natural person residing in California and are “persons” as defined by 47 U.S.C. § 277(a)(2)(A).

14. Defendant is a national vacation club and is a “person” as defined by 47 U.S.C. § 227(a)(2)(A). CCL’s State of Information and principal place of business are in the County of Orange, State of California.

FACTUAL ALLEGATIONS

15. Plaintiff alleges that at all times relevant herein Defendant conducted business in the State of California, County of Orange.

16. At no time did Plaintiff ever enter into a business relationship with Defendant.

17. Beginning in 2012, Defendant began contacting Plaintiff on Plaintiff’s cellular telephone to solicit Plaintiff’s business.

18. When possible, Plaintiff informed Defendant that Plaintiff did not wish to receive further communications and requested that Defendant cease further calls. Said requests were not honored by Defendant.

19. Defendant used an “automatic telephone dialing system”, as defined by 47 U.S.C. § 227(a)(1) to place its unsolicited calls to Plaintiff while using an “artificial or prerecorded voice” as prohibited by 47 U.S.C. § 227(b)(1)(A).

20. In addition, Defendant utilized Defendant’s “automatic telephone dialing system” to send numerous text messages to Plaintiff’s cellular telephone.

21. This ATDS has the capacity to store or produce telephone numbers to be called, using a random or sequential number generator.

22. These telephone communications constituted telephone solicitations as defined by 47 U.S.C. § 227(a)(4).
23. Defendant's calls constituted calls that were not for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).
24. Defendants' calls were placed to telephone number assigned to a cellular telephone service for which Plaintiff incur charges for incoming calls pursuant to 47 U.S.C. § 227(b)(1).
25. Plaintiffs have never been in an "established business relationship" with Defendants as defined by 47 U.S.C. 227(a)(2), nor have Plaintiffs ever sought Defendants' services at any point in the past.
26. These text messages and telephonic communications by Defendant, or Defendant's agent(s), to Plaintiff's cellular telephones violated the TCPA.
27. At no time did Plaintiff provide Plaintiff's prior express consent to Defendant nor Defendant's agents to place such telephonic communications and/or text messages to Plaintiff's cellular telephone.
28. Over the years, Plaintiff estimates that Plaintiff has received more than one hundred telephonic communications from Defendant in violation of the TCPA.

FIRST CAUSE OF ACTION

NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT

47 U.S.C. § 227 ET SEQ.

29. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.
30. The foregoing acts and omissions of Defendant constitutes numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

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31. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq, Plaintiff is entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

32. Plaintiff is also entitled to and seeks injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT 47 U.S.C. § 227 ET SEQ.

33. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

34. The foregoing acts and omissions of Defendant constitutes numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

35. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq, Plaintiff is entitled to an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

36. Plaintiff is also entitled to and seeks injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully request the Court grant Plaintiffs the following relief against Defendants:

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**FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF
THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1), Plaintiffs seeks for themselves \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

**SECOND CAUSE OF ACTION FOR KNOWING/WILLFUL VIOLATION OF
THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(b)(1), Plaintiffs seeks for themselves \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

TRIAL BY JURY

37. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: January 24, 2016

Respectfully submitted,

KAZEROUNI LAW GROUP, APC

By: /s/ Matthew M. Loker
MATTHEW M. LOKER, ESQ.
ATTORNEY FOR PLAINTIFF

KAZEROUNI LAW GROUP, APC
245 FISCHER AVENUE, UNIT D1
COSTA MESA, CA 92626